



April 3, 2002

Mr. John M. Knight  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2002-1640

Dear Mr. Knight:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160710.

The City of Lubbock and the Lubbock Police Department (collectively the “city”) received two requests for copies of reports, statements, and videotapes concerning two different incidents involving a certain Lubbock police officer. The second requestor also sought policy and procedures manuals and other documentation, which you do not seek to withhold. You state that the city does not have a copy of one of the requested videotapes. *See Open Records Decision No. 87 (1975)* (Act applies only to information in existence and does not require governmental body to prepare new information). In addition, you claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is inapplicable to a police department’s internal administrative investigations that do not involve the investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

You inform us that the Lubbock County Criminal District Attorney’s Office has charged the Lubbock police officer with three counts of official oppression for his conduct in relation to

the incidents that are the subjects of the submitted documents. You also assert that the release of the documents would interfere with the officer's prosecution. Based on your representations, we conclude that the release of the requested reports and statements would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the submitted reports and statements may be withheld under section 552.108(a)(1) of the Government Code.

We next address your assertion that the submitted videotapes are excepted from disclosure by section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer<sup>1</sup> that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Gov't Code § 552.119 (a)(1)-(3). This section also provides that a photograph made exempt from disclosure by this section may be made public only if the peace officer gives written consent to the disclosure. *Id.* § 552.119(b); *see also* Open Records Decision No. 502 (1988).

The submitted videotapes depict peace officers. You state that "[t]he City makes no claim regarding the photographic likeness of [the officer charged with official oppression]" but assert that none of the exceptions are applicable to any of the other peace officers depicted and inform us that none of the other officers has executed a written consent to disclosure. Therefore, under section 552.119 of the Government Code, the city must withhold any portion of the videotapes that includes the image of any of the peace officers other than the one awaiting prosecution. The remainder of the videotapes, however, is not protected under section 552.119.

In summary, the city may withhold the requested reports and statements under section 552.108(a)(1). The portions of the videotapes that portray the peace officers to whom 552.119 applies must also be withheld. As our ruling on these issues is dispositive, we do not address your other claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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<sup>1</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

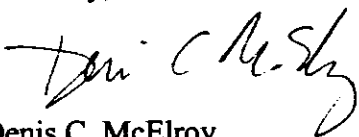
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 160710

Enc. Submitted documents

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